

STATE OF MICHIGAN
COURT OF APPEALS

PAMELA JEAN LAMMERS,

Plaintiff-Appellant,

v

RONALD EDWARD LAMMERS,

Defendant-Appellee.

UNPUBLISHED

October 5, 1999

No. 218726

Monroe Circuit Court

Family Division

LC No. 96-022715 DM

Before: Gribbs, P.J., and O'Connell and R.B. Burns,* JJ.

PER CURIAM.

Plaintiff-appellant, Pamela Lammers, appeals as of right from the order awarding physical custody of the parties' daughter, Brooklynn, to defendant-appellee, Ronald Lammers. We affirm.

Plaintiff first claims that the trial court erred in setting aside the custody agreement reached between the parties because there was no material change of circumstances which justified the court's decision to set the agreement aside. We disagree. The material change in circumstances was plaintiff's "spur of the moment" move from Hillsdale, approximately eighty miles from defendant's home in Trenton, to Harbert, in the far southwest corner of the state, approximately 210 miles from Trenton, one month after the custody agreement was placed on the record. The record reveals that, when the custody agreement was reached in August 1998, the fact that plaintiff and Brooklynn would be living in the Hillsdale area, approximately one hour's drive from Trenton, was a significant factor in defendant's decision to consent to allow plaintiff to have physical custody of Brooklynn. Indeed, the trial court specifically indicated that if either party moved from their current locations, such a move would be viewed as a change of circumstances and "would be grounds to reconsider the arrangements that have been agreed to today, just so you both understand that." Nonetheless, plaintiff did not inform the trial court of her intended move, did not discuss the move with defendant and, indeed, did not inform defendant of the move until after it was completed. Plaintiff's move to Harbert placed a significant obstacle in the way of defendant's desire to be actively involved in Brooklynn's life and undermined his reasons for entering into the custody agreement in the first place. The trial court did not err in setting aside the custody agreement reached by the parties.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiff also argues that the trial court erred in determining that there was no established custodial environment for Brooklynn with either parent. We do not agree. An established custodial environment is one of significant duration, both physical and psychological, in which the relationship between the custodian and child is marked by security, stability and permanence. *Baker v Baker*, 411 Mich 567, 579-580; 309 NW2d 532 (1981); *DeVries v DeVries*, 163 Mich App 266, 271; 413 NW2d 764 (1987). A trial court's findings will be sustained unless the evidence clearly preponderates in the opposite direction. *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994); *Ireland v Smith*, 214 Mich App 235, 242; 542 NW2d 344 (1995).

In this case the evidence supports the finding that there were repeated changes in physical custody and frequent moves by plaintiff. Brooklynn spent a great deal of time with defendant throughout the course of these proceedings, and there was a tendency on the part of plaintiff to change her mind with regard to whether she wanted custody of her daughter or not. We agree that these factors, coupled with the uncertainty created by the upcoming custody hearing, destroyed any custodial environment that might have otherwise been established with plaintiff. *Bowers v Bowers (After Remand)*, 198 Mich App 320, 326; 497 NW2d 602 (1993). Instead, it appears from the evidence that Brooklynn looked to both parents to provide her with guidance, discipline and the necessities of life. Under these circumstances, the trial court did not err in determining that no established custodial environment existed with either parent. MCL 722.27(1)(c); MSA 25.312(7)(1)(c).

Finally, after having conducted a thorough review of the record, we believe that the trial court correctly determined that awarding defendant physical custody of Brooklynn was in her best interests. The trial court considered the best interest factors set forth in MCL 722.23; MSA 25.312(3). Our review of the record reveals that the trial court's findings of fact with respect to each of the factors in question were not contrary to the great weight of the evidence, nor was the court's discretionary ruling regarding the ultimate custody decision an abuse of discretion. *Fletcher, supra* at 879; *McCain v McCain*, 229 Mich App 123, 131; 580 NW2d 485 (1998).

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns